

THE HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

HUNTERS CAPITAL, LLC, a Washington  
limited liability company, et al., on behalf of  
themselves and others similarly situated,

Plaintiffs,

vs.

CITY OF SEATTLE,

Defendant.

Case No. 2:20-cv-00983 TSZ

JOINT STATUS REPORT

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, LCR 26(f), and the Court's Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement, Dkt. No. 7, filed on June 30, 2020, counsel for the parties conducted telephone conferences on August 17, 2020, and September 9, 2020.

The parties hereby present their Joint Status Report as follows:

**1. Statement of the Nature and Complexity of the Case:**

Plaintiffs are businesses, residents, and property owners in Seattle's Capitol Hill neighborhood. From June 8, 2020, until the morning of July 1, 2020, portions of that neighborhood were occupied by a loosely organized group of individuals who identified themselves by various

1 names, eventually settling on “CHOP,” standing for Capitol Hill Occupied Protest. During the  
2 existence of CHOP, some public streets and sidewalks in the area were blocked to various degrees  
3 with barriers, tents, and other obstacles. The public Cal Anderson Park was part of CHOP and  
4 included numerous encampments.

5 Plaintiffs allege, on behalf of themselves and a class of others similarly situated, that the  
6 existence of CHOP caused them substantial property and economic damage, severely restricted  
7 their ability to use and enjoy their properties and access the public streets, and subjected them to  
8 incessant harassment and noise. Plaintiffs allege that Defendant City of Seattle (“the City”) is liable  
9 for this harm because of its actions in assisting and endorsing CHOP. Plaintiffs have pled several  
10 constitutional theories: procedural due process, substantive due process, equal protection, and  
11 takings. Plaintiffs also have placed the City on formal notice of their claims for state-law nuisance  
12 and negligence and anticipate seeking to amend their allegations to include those claims once the  
13 mandatory period of notice has expired under Washington law. Plaintiffs will address the City’s  
14 futility argument raised below as needed in briefing, but they note for present purposes that the  
15 case the City has cited is inapposite.

16 The City contends that it is not responsible for the actions of third parties and has no  
17 obligation to prevent the criminal and other acts of such third parties identified by Plaintiffs. The  
18 City has moved to dismiss all of Plaintiffs’ claims and briefing on that motion is complete. The  
19 City anticipates that the complexity of making individualized determinations of liability (including  
20 causation) and damages will defeat class certification. The City will oppose amendment to add  
21 tort claims as doing so is futile. *See Bosteder v. City of Renton*, 117 P.3d 316, 330 (Wash. 2005)  
22 (requirement that tort claim be noticed before “commence[ment]” of the “action” meant that  
23 plaintiff could not amend to add a claim after expiration of notice period).”

24 **2. Deadline for the joining of additional parties:** The parties jointly propose  
25 February 12, 2021, as the deadline for joining additional parties.

1           **3. Magistrate Judge:** No.

2           **4. Discovery Plan:** Plaintiffs do not anticipate difficulty in conducting discovery in  
3 this lawsuit. The City anticipates difficulty in conducting and agreeing to reasonable limits on  
4 discovery based on Plaintiffs' initial set of discovery to the City and has sought to stay discovery  
5 until after the Court rules on the City's motion to dismiss. The parties report as follows regarding  
6 other aspects of discovery:

7                   **A. Initial disclosures:** The parties exchanged initial disclosures on September  
8 28, 2020.

9                   **B. Subjects, timing, and potential phasing of discovery:** Plaintiffs do not  
10 foresee the need for phasing of discovery. Plaintiffs have opposed the City's motion to stay and  
11 will not revisit that argument here. In addition, the City also proposes below that if discovery is  
12 not stayed, that the Court bifurcate of discovery into issues related to class certification, as opposed  
13 to other issues, but the two areas of discovery cannot be reasonably separated from each other in  
14 this case. For example, as stated above in section 1, the City intends to defeat class certification by  
15 establishing that there are predominating individual issues of causation and damages. Examination  
16 and testing of the City's theory will necessarily require inquiry into questions bearing on liability,  
17 such as what exactly the City did or did not do, and whether those actions or inactions caused  
18 Plaintiffs and the class harm. If the Court is nonetheless inclined to consider bifurcation of  
19 discovery, Plaintiffs suggest the Court either have briefing or a hearing on that issue to allow the  
20 parties to expound upon these issues more than is appropriate in a joint status report.

21           The City disagrees. In consideration of its motion to dismiss, the City requested that the  
22 Court stay discovery pending further order of the Court. If the Court determines that the plaintiffs  
23 have pled claims for which relief may be granted, the City asks the Court to then phase discovery  
24 such that, until a decision on class certification is made, the only discovery permitted is that  
25 relevant to the determination of whether a class action may be maintained.

1           **C. Electronically stored information:** The parties have discussed  
 2 electronically stored information (ESI) and are negotiating an ESI agreement based upon the  
 3 Court's Model Agreement Regarding Discovery of Electronically Stored Information.

4           **D. Privilege issues:** The parties have agreed to enter into an agreement based  
 5 upon the Model Stipulated Protective Order to protect against the release of certain confidential  
 6 information.

7           **E. Proposed limitations on discovery:** Plaintiffs do not foresee the need for  
 8 a limitation on discovery at this time, but they will bring any issues that may arise regarding scope  
 9 to the Court's attention. The City disagrees and, as described above in Section B, sees (1) the need  
 10 for a stay of discovery to avoid very significant expense pending the Court's ruling on the City's  
 11 motion to dismiss; and (2) the need to phase discovery.

12           **F. The need for any discovery related orders:** The parties have agreed to  
 13 enter into the Court's Model Stipulated Protective Order, subject to certain potential revisions to  
 14 be agreed upon by the parties. As described above in Sections B and E, the City has sought to stay  
 15 discovery and seeks phased discovery if the case proceeds.

16           **5. Local Rule 26(f)(1):** Plaintiffs do not anticipate any need for phased discovery, or  
 17 phasing of motions, or any deviation from the processes that are provided for under the Federal  
 18 Rules of Civil Procedure or this Court's Local Rules. The City disagrees, and, as described above  
 19 in Sections B, E, and F, the City has sought to stay discovery and seeks phased discovery if the  
 20 case proceeds.

21           **A. Prompt case resolution:** The parties have not engaged in preliminary  
 22 settlement discussions. The parties have not yet determined the feasibility of early settlement or  
 23 whether mediation would be helpful at this time or later in the litigation.

24           **B. Alternative dispute resolution:** The parties are mindful of the potential  
 25 benefits associated with early or other participation in mediation or other dispute resolution

processes. They are not prepared to engage in alternative dispute resolution at this time, but they will continue to evaluate the potential benefits of doing so as the litigation progresses. Mediation or other ADR may be helpful after the parties have engaged in or finished discovery.

**C. Related cases:** There are no related cases that have been served on the City.

**D. Discovery management:** The parties` agree to share discovery from third parties, but not the cost of obtaining that discovery. *See* LCR(f)(1)(D)(ii). The City believes that Court involvement in discovery may be required early in this case and requests that the Court convene a discovery conference if the Court denies the motion to dismiss or grants the motion to dismiss with leave to amend. *See* LCR(f)(1)(D)(iii). The parties agree to work cooperatively to avoid unnecessary discovery disputes and discovery costs.

**E. Anticipated Discovery Sought.** Plaintiffs anticipate seeking discovery from the City and various custodians employed by the City on the following range of topics: actions taken by the City to support and endorse CHOP, the City's knowledge of injuries to Plaintiffs and others in and near CHOP and evaluation of those injuries or damages, and the actions taken by the City during the same time period in other areas of the City. Plaintiffs anticipate that this discovery will be sought through discovery requests and depositions. Plaintiffs may also seek depositions or other discovery from other individuals and entities harmed in the area who are not named Plaintiffs in this case.

The City anticipates that, if the Court determines that Plaintiffs have stated a claim upon which relief may be granted, it will seek discovery from each Plaintiff regarding causation and damages, as well as discovery from a broad range of sources to identify the private actors who caused the damages and injuries identified by Plaintiffs in their complaint.

**F. Phasing of motions:** The parties do not anticipate the need for specific phasing of motions. Plaintiffs anticipate a deadline of July 30, 2021, would be appropriate for a motion concerning class certification, assuming that there is no stay of discovery.

1           **G. Preservation of discoverable information:** Both parties represent that  
 2 they have taken adequate steps to preserve potentially discoverable information relating to the  
 3 litigation.

4           **H. Privilege issues:** The parties are unaware of any privilege issues requiring  
 5 the Court's attention at this time and will include in their ESI agreement and proposed protective  
 6 order provisions concerning inadvertent disclosure of privileged material or work product.

7           **I. Model Protocol for Discovery of ESI:** The parties intend to enter into a  
 8 modified version of the Court's Model Agreement Regarding Discovery of Electronically Stored  
 9 Information.

10           **J. Alternatives to Model Protocol:** Not applicable.

11           **6. Completion of discovery:** Plaintiffs anticipate that discovery can be completed by  
 12 October 15, 2021. The City anticipates that discovery can be completed by March 1, 2022.  
 13 Plaintiffs propose setting an expert witness disclosure date of August 1, 2021, and an expert  
 14 witness rebuttal deadline of September 15, 2021. The City proposes expert deadlines of January  
 15 3, 2022, and February 15, 2022.

16           **7. Bifurcation:** Plaintiffs do not believe that bifurcation is necessary or appropriate  
 17 in this case in its current form. Plaintiffs suggest this issue may need to be revisited for trial after  
 18 the resolution of Plaintiffs' anticipated motion for class certification. The City believes liability  
 19 and damages should be bifurcated.

20           **8. Pretrial statements / pretrial order.** The parties do not believe that the pretrial  
 21 statements or pretrial order should be dispensed with in whole or in part.

22           **9. Suggestions for shortening or simplifying the case:** The parties do not have any  
 23 particular suggestions for shortening or simplifying the case.

24           **10. Date of trial:** Plaintiffs believe that they can be ready for trial in February 2022.  
 25 Given the need for a determination of whether this case can be maintained as a class action, and

the time needed to gather the information, bring that motion, and have a decision issued, and the work that will be required once that motion is decided (including expert disclosures in February 2022), the City asks that a trial date be set in May or June 2022.

**11. Jury or non-jury trial:** Plaintiffs have demanded a jury trial in this case.

**12. The number of trial days required:** At this time, Plaintiffs believe that the anticipated number of days required for trial would be 15 days. The City contends that, given the various causation and damages issues in this case, liability should be tried separately from damages, and that it will be difficult to predict the length of the liability phase of the trial until after Court rulings. The City believes that 15 days for the liability phase of the trial could be sufficient.

**13. The names, addresses, and telephone number of all trial counsel:**

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*Attorneys for Defendant the City of Seattle*

**14. Potential complications in setting trial dates:** The parties do not anticipate problems setting trial dates in February, May, or June 2022, the dates requested by Plaintiffs and the City. Counsel for the City requests that trial not be set for August / September 2021 or August / September 2022.

**15. Service on all parties:** The City has been served with a summons and complaint.

**16. Scheduling conference.** Plaintiffs do not believe a scheduling conference is necessary, unless the Court is inclined to bifurcate discovery, in which case Plaintiffs believe a scheduling conference or other hearing on that issue would be appropriate. Due to the complexities of this case, including that it is pled as a putative class action and the breadth of discovery sought by Plaintiffs in their first discovery requests, the City requests that the Court convene a scheduling



1 conference before the Court enters a scheduling order and a discovery conference if the Court  
2 denies the motion to dismiss or grants the motion to dismiss with leave to amend.

3 **17. Corporate disclosure statements for nongovernmental corporate parties:** On  
4 July 10, 2020, Plaintiffs filed a corporate disclosure statement for those entities for which they  
5 understand the local rules to require a statement. The City is not required to file a statement. In  
6 response to the City's objection to their prior statement, Plaintiffs intend to file an amended  
7 statement on October 8, 2020.

8  
9 DATED this 28th day of September, 2020.

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